

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Michael R. Rice et al.
Serial No. : 10/764,820
Filed : January 26, 2004
For : OVERHEAD TRANSFER FLANGE AND SUPPORT FOR
SUSPENDING A SUBSTRATE CARRIER
Examiner : Charles A. Fox
Group Art Unit : 3652
Customer No. : 41161
Confirmation No.: 6886
Response Filed.: January 8, 2009

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

A Restriction Requirement has been issued under 35
U.S.C. 121 whereby restriction between the following
Inventions is required:

- I. Claims 1, 3, 6-8, and 33, drawn to a suspension support.

II. Claims 9, 13, and 34, drawn to a substrate cassette.

III. Claims 14, 16, 19-23, and 36, drawn to an overhead hoist.

IV. Claims 24-28, and 35, drawn to a method of moving a cassette.

In response to the Examiner's Restriction Requirement dated December 8, 2008, Applicants elect Group I upon which Claims 1, 3, 6-8, and 33 read, with traverse, in the above-identified application.

Applicants respectfully traverse the Restriction Requirement because the requirement is not only highly irregular and very late in the prosecution, examination of all pending claims does not impose a serious burden on the office. In particular, the MPEP states in §811 (see also 37 CFR 1.142(a)) that a restriction requirement "will normally be made before any action upon the merits; however, it may be made at any time before final action." This means the Examiner should make a proper requirement as early as "possible" in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops. Furthermore, before making a restriction requirement after the first action on the merits, the Examiner will (emphasis added) consider whether there will be a serious burden if restriction is not required. Examiner has not provided any evidence or even a statement that the

Examiner has considered whether a serious burden exists on the Office.

Respectfully, Applicant's submit that at this late stage in the prosecution (after the filing of a first and second Request For Continued Examination) that no serious burden exists which would warrant the present Restriction Requirement. The search has been completed by the previous Examiner. No additional search is required on the part of the present Examiner (reassigned to the case) in that the amendments made in the previous response dated September 1, 2008 included only clarifying amendments to the independent claims 1, 9, 14 and 24. Additionally, the issues are well developed and are not in need of further development.

Although the Applicants can sympathize with and recognize that the Examiner has been reassigned to this case and, thus, will need to spend some time in order to understand the history of the case, we submit that this does not rise to the level of a "serious burden" as required in order to make such a late Restriction Requirement. We submit that the fact that Examiners, from time to time, will, for various reasons, need to be reassigned does not constitute a serious burden to the office, nor to the Examiner reassigned to the case. Accordingly, Applicants submit that the present Restriction Requirement is highly improper, and does not impose a serious burden on the Office, and therefore should be withdrawn.

Applicants do not believe any additional fees are due regarding this response. However, if any additional fees are required, please charge Deposit Account No. 04-1696.

Respectfully submitted,



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Dated: January 8, 2009
Hawthorne, New York